

MAY. 2. 2006 9:15AM

TOLER SCHAFFER

NO. 273 P. 1

**TOLER SCHAFFER, LLP**  
5000 Plaza on the Lake, Suite 265  
Austin, TX 78746  
Ph. 512-327-5515  
Fax 512-327-5575

**RECEIVED**  
**CENTRAL FAX CENTER**  
**MAY 02 2006**

## **FACSIMILE COVER SHEET**

**DATE:** May 2, 2006

**TO:** Examiner PATEL, Hemant **FAX NO.:** 571-273-8300  
Shantilal  
USPTO GPAU 2645

**FROM:** Jeffrey G. Toler  
Reg. No.: 38,342

**RE U.S. App. No.:** 10/644,260, filed August 20, 2003

**Applicant(s):** John Patrick Romeo

**Atty Dkt No.:** 1033-SS00413

**Title:** A SYSTEM AND METHOD FOR MULTI-MODAL MONITORING  
OF A NETWORK

**NO. OF PAGES (including Cover Sheet):** 10

### **MESSAGE:**

Attached please find:

- ☒ Transmittal Form (1 pg)
- ☒ Notice of Appeal (in duplicate) (2 pgs)
- ☒ Pre-Appeal Brief Request for Review (1 pg)
- ☒ Remarks in Support of the Pre-Appeal Brief Request for Review (5 pgs)

5000 Plaza On The Lake  
Suite 265  
AUSTIN, TEXAS 78746

Tel: (512) 327-5515  
Fax: (512) 327-5575

### **CONFIDENTIALITY NOTE**

*The pages accompanying this facsimile transmission contain information from the law office of Toler Schaffer, L.L.P. and are confidential and privileged. The information is intended to be used by the individual(s) or entity(ies) named on this cover sheet only. If you are not the intended recipient be aware that reading disclosing copying distribution or use of the contents of this transmission is prohibited. Please notify us immediately if you have received this transmission in error at the number listed above and return the document to us via regular mail.*

MAY 2 2006 9:15AM

TOLER SCHAFFER

RECEIVED  
CENTRAL FAX CENTER

NO. 273 P. 2

MAY 02 2006


PTO/SB/21 (09-04)

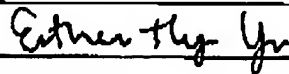
Approved for use through 07/31/2006. OMB 0851-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	10/644,260	
	Filing Date	August 20, 2003	
	First Named Inventor	John Patrick Romeo	
	Art Unit	2645	
	Examiner Name	PATEL, Hemant Shantilal	
Total Number of Pages in This Submission	10	Attorney Docket Number	1033-SS00413

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Pre-Appeal Brief Request for Review; Remarks in Support of the Pre-Appeal Brief Request for Review
Remarks CUSTOMER NO.: 60533		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm Name	Toler Schaffer, L.L.P.	
Signature		
Printed name	Jeffrey G. Toler	
Date	5-1-2006	Reg. No. 38,342

CERTIFICATE OF TRANSMISSION/MAILING		
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.		
Signature		
Typed or printed name	Esther H. Yu	Date May 2, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

MAY 2 2006 9:16AM

TOLER SCHAFFER

RECEIVED  
CENTRAL FAX CENTER

NO. 273

P. 5

MAY 02 2006

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through 10/01/2006. OMB 0651-0004

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1996, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		1033-SS00413	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>May 2, 2006</u> Signature <u>Esther H. Yu</u> Typed or printed name <u>Esther H. Yu</u>		Application Number <u>10/644,260</u>	Filed <u>August 20, 2003</u>
		First Named Inventor <u>John Patrick Romeo</u>	
		Art Unit <u>2645</u>	Examiner <u>PATEL, Hemant S.</u>
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the		<u>Jeffrey G. Toler</u> Signature <u>Jeffrey G. Toler</u> Typed or printed name	
<input type="checkbox"/>	applicant/inventor.		
<input type="checkbox"/>	assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)		
<input checked="" type="checkbox"/>	attorney or agent of record. Registration number <u>38,342</u>	<u>512-327-5515</u> Telephone number	
<input type="checkbox"/>	attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<u>5-1-2006</u> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input checked="" type="checkbox"/>	Total of <u>1</u> forms are submitted.		

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

MAY 2 2006 9:16AM

TOLER SCHAFFER

RECEIVED  
CENTRAL FAX CENTER

NO. 273 P. 6

MAY 02 2006

CUSTOMER NO.  
60533

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: John Patrick Romeo  
Title: A SYSTEM AND METHOD FOR MULTI-MODAL MONITORING  
OF A NETWORK  
App. No.: 10/644,260 Filed: August 20, 2003  
Examiner: PATEL, Hemant Shantilal Group Art Unit: 2645  
Atty. Dkt. No.: 1033-SS00413 Confirmation No.: 7476

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

REMARKS IN SUPPORT OF  
THE PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

In response to the Final Office Action mailed on February 10, 2006 (hereinafter, "the Final Office Action"), Applicant hereby cancels claim 20 without prejudice or disclaimer. Thus, the rejection of claim 20 over Saleh is rendered moot. Pursuant to the Notice of Appeal and Pre-Appeal Brief Request for Review submitted herewith, the Applicant requests review of the following issues:

1. Claims 1-8 Are Allowable over Gerber and Beckett

Applicant traverses the rejection of claims 1-8 under 35 U.S.C. §103(a) over U.S. Patent Application Publication No. 2002/0025806 A1 ("Gerber") in view of U.S. Patent No. 6,510,220 B1 ("Beckett"), at pages 8-11, paragraph 4 of the Final Office Action.

The Final Office Action asserts that Beckett teaches "format conversion to audible sound" at Figure 1, item 50, and col. 17, lines 30-34. *See Final Office Action*, p. 9, paragraph 4. However, Beckett discloses voice hardware for synchronized voice and screen monitoring from a remote location for providing training assistance to an employee that uses a workstation in connection with a telephone. *See Beckett*, Abstract. Beckett discloses that it is desirable to allow a supervisor of an agent to "look over the shoulder" of the agent during the agent's telephone

CERTIFICATE OF TRANSMISSION/MAILING	
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to the Commissioner for Patents on <u>May 2, 2006</u> .	
_____ Typed or Printed Name	_____ Signature

conversations to view the agent's computer activities while listening to the agent's telephone conversations. *See Beckett*, col. 1, line 59-col. 2, line 12. Beckett discloses a method and apparatus for providing on-the-job work training of an agent including passive workstation monitoring that allows a supervisor to "simultaneously monitor" on-screen and telephonic activities of the agent. *See Beckett*, col. 2, lines 30-40. Voice hardware 50 is provided "in the form of a voice card mounted within the server" and wired to the telephone system to provide telephone extensions to the supervisor and the agent. *See Beckett*, col. 17, lines 30-35.

The Final Office Action acknowledges that Gerber fails to disclose or suggest "format conversion to audible sound." *See Final Office Action*, p. 9, paragraph 4. Beckett fails to disclose or suggest a format converter associated with the multimodal administration engine, the format converter operable to translate at least a portion of a first signal representing network information into a second signal representing an audible sound, as recited by claim 1. The voice hardware of Beckett simply routes the telephone conversation to the supervisor. *See Beckett*, Abstract, and col. 17, lines 30-35. Beckett makes no mention of format conversion to audible sound. Moreover, Beckett routes telephone conversations (*See Beckett*, col. 2, lines 30-40). Beckett fails to disclose or suggest translating at least a portion of a first signal representing network information into a second signal representing audible sound, as recited in claim 1. Accordingly, since the Final Office Action acknowledges that Gerber fails to disclose this element, and since Beckett fails to disclose this feature in view of the discussion above, the asserted combination of Gerber and Beckett fails to disclose or suggest at least one element of independent claim 1, and of claims 2-8, at least by virtue of their dependency from allowable claim 1. Therefore, the rejection of claims 1-8 should be withdrawn.

Moreover, as discussed at pages 8-10 of the reply to non-final office action, sent December 17, 2005, Gerber and Beckett fail to disclose or suggest a motivation to make the asserted combination and the asserted combination constitutes an impermissible hindsight reconstruction based on the disclosure of the present application. Accordingly, the rejection is improper and should be withdrawn.

**2. Claims 9 and 10 are Allowable over Gerber and Beckett, in View of Metcalf**

Applicant traverses the rejection of claims 9 and 10 under 35 U.S.C. §103(a) over Gerber and Beckett, and further in view of U.S. Patent Application Publication No. 2002/0122541 A1 ("Metcalf") at pages 11-12 of the Final Office Action.

CUSTOMER NO.  
60533

While the web assistant feature of Metcalf translates a user voice command into "a signal that mimics signals from other input devices (e.g., a mouse or keyboard) for performing the same function" (*See Metcalf*, p. 6, paragraph 59), Metcalf fails to overcome the deficiencies of Gerber and Beckett with respect to claim 1. Namely, Metcalf fails to disclose or suggest translating at least a portion of a first signal representing network information into a second signal representing audible sound, as recited in claim 1. Thus, the asserted combination of Gerber, Beckett and Metcalf fails to disclose or suggest at least one element of each of the dependent claims 9 and 10, at least by virtue of their dependency from allowable claim 1. Accordingly, the rejection of claim 9 and 10 should be withdrawn.

Moreover, the Final Office Action acknowledges that Gerber and Beckett fail to disclose or suggest a format converter operable to translate at least a second portion of a first signal representing network information into a third signal receivable by the access device type, translating at least a second portion of a first signal representing network information into a third signal receivable by the access device type, as recited by claim 9. Instead, Metcalf discloses converting an audible command into a user command signal. *See Metcalf*, p. 6, paragraph 59. Metcalf fails to disclose or suggest that the user command is "a first signal representing network information" as recited by claim 9. Therefore, the asserted combination fails to disclose or suggest the specific combination of claim 9.

Additionally, the cited references fail to disclose or suggest a motivation to make the asserted combination. It would not have been obvious to a worker skilled in the art to modify a network management server of Gerber with an agent on-screen and telephone monitoring system of Beckett and with an automated reception system of Metcalf to make the alleged combination. Accordingly, the asserted combination of Gerber, Beckett and Metcalf is an impermissible hindsight reconstruction based on the disclosure of the present application. The rejection over the asserted combination should be withdrawn.

**3. Claim 11-17 and 19 Are Allowable Over the Asserted Combination of Gerber, Saleh, and Metcalf**

Applicant traverses the rejection of claims 11-14, 16, and at 17 under §103(a) over Gerber in view of Saleh, and further in view of Metcalf at pages 13-17, paragraph 6 of the Final Office Action. The Final Office Action acknowledges that Gerber and Saleh fail to disclose or suggest that a party can receive graphical information via a data connection. The Final Office

Action asserts that Metcalf discloses this feature at paragraphs 56 and 59. *See Final Office Action*, p. 14, paragraph 6.

Metcalf at paragraph 56 discloses a network server to provide a subscriber or a supervisor with system or user configuration information, which may be displayed on a computer connected to the network. However, Metcalf discloses that the network server is configured to send messages over the network, such as the world wide web, via a Web interface. *See Metcalf*, paragraph 55. The supervisor or user accesses the web interface of the server to receive graphical information (*See Metcalf*, paragraphs 55 and 56) and the user accesses a telephone interface for audio interaction (*See Metcalf*, paragraphs 58 and 59). Metcalf fails to disclose or suggest recognizing that a party can receive audible information via the call and graphical information via a data connection, as recited by claim 11. Accordingly, the asserted combination of Gerber, Saleh and Metcalf fails to disclose or suggest at least one element of independent claim 11, and of claims 12-14, 16 and 17, at least by virtue of their dependency from allowable claim 11.

**4. Claim 18 is Allowable over Gerber, Saleh, and Metcalf, and further in View of McDuff**

Applicant traverses the rejection of claim 18 under §103(a) over Gerber, Saleh, and Metcalf, and further in view of U.S. Patent No. 6,490,350 B2 ("McDuff") at pages 17-18, paragraph 7 of the Final Office Action. The Final Office Action acknowledges that the asserted combination of Gerber, Saleh, and Metcalf fails to disclose or suggest initiating communication to the party of information representing a graphical user interface that displays a visual representation of a network monitored by the network management engine, as recited in claim 18. McDuff discloses that the server outputs events that are packaged in event structures, which are processed and categorized and sent over a data link to the monitoring system client. *See McDuff*, col. 5, lines 12-16. This type of information may be a change of state information (*See McDuff*, col. 5, lines 30-37 and lines 49-52) or statistical information (*See McDuff*, col. 5, lines 55-56. However, McDuff discloses that the statistical information is "not continuously fed into the monitoring system client 51; rather, the monitoring system client 51 polls CTIMS 36 on a periodic basis (such as every 5 seconds) by sending requests 54 to receive updated statistics 56 from CTIMS." *See McDuff*, col. 5, lines 55-64. Thus, the system of McDuff fails to "initiate communication to the party of information representing a graphical user interface that displays a visual representation of a network monitored by the network management engine" as recited in

CUSTOMER NO.  
60533

claim 18. Accordingly, the asserted combination of Gerber, Saleh, Metcalf and McDuff fails to disclose or suggest initiating communication to the party of information representing a graphical user interface that displays a visual representation of a network monitored by the network management engine, as recited by claim 18. Moreover, McDuff fails to overcome the deficiencies of the combination of Gerber, Saleh and Metcalf applied to claim 11, as discussed above. Accordingly, the asserted combination of Gerber, Saleh, Metcalf and McDuff fails to disclose or suggest at least two elements of claim 18. Therefore, the rejection of claim 18 should be withdrawn.


### CONCLUSION

Applicant has pointed out specific features of the claims not disclosed, suggested or rendered obvious by the references applied in the Final Office Action. Accordingly, Applicant respectfully requests reconsideration and withdrawal of each of the objections and rejections, as well as an indication of allowability of each of the claims now pending.

Applicant does not believe that any additional fees are due, but if the Commissioner believes additional fees are due, the Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 50-2469.

Respectfully submitted,

5-1-2006  
Date

  
Jeffrey G. Toler, Reg. No. 38,342  
Attorney for Applicant(s)  
TOLER SCHAFFER, L.L.P.  
5000 Plaza On The Lake, Suite 265  
Austin, Texas 78746  
(512) 327-5515 (phone)  
(512) 327-5575 (fax)

JGT/RMR